

# United States District Court, Eastern District of Wisconsin

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 CR 84	DATE	8/17/2009
CASE TITLE	U.S.A. vs. John Miller		

**DOCKET ENTRY TEXT:**

John Miller, a federal prisoner, filed pro se two documents entitled "Defective Indictment Motion" and Affidavit of John Miller," both of which seek relief in the nature of a motion, and the clerk is hereby directed to docket them as motions. Both motions, while captioned otherwise, may fairly be characterized as the functional equivalent of a motion under 28 U.S.C. § 2255. See Melton v. United States, 359 F. 3d 855 (7<sup>th</sup> Cir. 2004). Therefore, the court advises Miller of its intent to characterize the motions as a single motion under § 2255, warns him that the characterization will subject any subsequent § 2255 motion to the restrictions applicable to second or successive § 2255 motions (see 28 U.S.C. § 2255(h)), and provides Miller the opportunity to either amend or withdraw the motion. Should he decide to amend or withdraw, he has 30 days from the date of this order to do so by filing a notice of withdrawal or an amended motion. If he does neither, the court will rule on the original motion as one under § 2255 and request a response from the government and any reply from Miller at that time. Any other potential claims under § 2255 would need to be raised in any amended motion. To the extent the current motions seek relief related to his conditions of confinement, those claims cannot properly be maintained under § 2255.

Notices mailed by Judicial staff.



	Courtroom Deputy	/SEC
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